

REMARKS

Claims 1-36 are pending in this application. All of the pending claims are rejected. Claims 1, 12, 24, and 31 are currently amended. Reconsideration is respectfully requested.

Claims 1-36 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. More particularly, the examiner suggests that certain features need to be recited as being stored on a computer readable storage medium. The claims are currently amended as suggested by the examiner.

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,681,232 (Sistanizadeh) in view of US 6,728,484 (Ghani). The rejections are unchanged from the most recent rejection and substantially identical to those that applicant attempted to appeal. Applicant previously argued that the pending claims distinguish the cited combination because (1) Sistanizadeh allows access to topology information through the interface, and (2) Sistanizadeh fails to describe an application programming interface which receives input from a user application indicative of application-specific bandwidth management service requirements. These distinguishing features are discussed separately below.

In the *Response To Arguments* the examiner asserts that applicant's invention allows access to topology information through the interface like Sistanizadeh. More particularly, the examiner refers to the description of figure 6 and states that "based on this passage recited from Applicant's specification, it is to the Examiner's understanding that the users in the presently invention do have access also to topology information through the interface since they provide predefined parameters to the OSA in order to manage the communication services for the user." The examiner is reminded that it is improper to import claim limitations from the specification. "Though understanding the

claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim.”

*Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004). The examiner is also reminded that the “predefined parameters” are provided *by the user application* to the OSA.<sup>1</sup> Consequently, the carrier’s network topology cannot be leaked *to the user* by the predefined parameters. Further, the examiner focuses on a single embodiment but the specification describes various embodiments of the invention which include different features. For example, at page 22, lines 9-12 it is stated with reference to figures 16 and 17 that “because the OSS rather than the OSA-N floods the advertisement, the OSS does not ‘leak’ topological information to the OSA-enabled user ... therefore there is no confusion of the separation between the NNI and the UNI.” It is respectfully suggested that the examiner is interpreting the claims too broadly by disregarding limitations based on a misunderstanding of only one of the embodiments of the invention that should not be read into the claims anyway.

In the *Response To Arguments* the examiner asserts that Sistanizadeh describes an application programming interface which receives input from a user application indicative of application-specific bandwidth management service requirements in the form of “a service level manager application” for “monitoring the operations of the extended-area data communications network, by analyzing semantic transparency or time transparency of data traffic through the network based on the data provided by the persistence layer module from the agents in the network.” Applicant previously emphasized the limitation “from a user application” but no mention is made of it in the *Response To Arguments*. The distinction between Sistanizadeh and the recited invention

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<sup>1</sup> For example, the parameters could include the bandwidth required by the user.

is fundamental. A Service Level Agreement (SLA) is a written contract between two corporations specifying network performance metrics, e.g., a particular bandwidth, jitter and latency between two points, 24/7/365. Sistanizadeh describes a way to automate SLA compliance testing by entering the SLA terms into a database and comparing the stored metrics against metrics gathered from network devices. The purpose is to detect non-compliance without need for manual intervention. In contrast, the recited invention concerns how a user application can request network services from the network without need for manual intervention. For example, a data backup program could signal to the network that it requires an OC3 connection from a gateway in Boston to a gateway in Los Angeles on a particular date for a particular duration of time. The claims do not recite performance monitoring for SLA compliance and there is no reasonable suggestion in Sistanizadeh that would lead to the recited invention.

Claims 1, 12, 24, and 31 are allowable for the reasons stated above. Dependent claims 2-11, 13-23, 25-30, and 32-36 further distinguish the invention and are allowable for the same reasons as their respective base claims.

Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-4001 so that such issues may be resolved as expeditiously as possible. For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

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Date

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